



**ASSEMBLY SUBSTITUTE AMENDMENT 2,  
TO 1995 ASSEMBLY BILL 438**

December 6, 1995 - Offered by Representative RILEY.

1 **AN ACT to amend** 346.94 (16) (a) and 346.95 (1); and **to create** 66.948, 346.945,  
2 346.95 (5e) and 346.95 (5g) of the statutes; **relating to:** the improper use of  
3 radios, electric sound amplification devices and other sound-producing  
4 devices, the imposition of vehicle owner liability for improper use of a radio or  
5 other electric sound amplification device and providing a penalty.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

6 **SECTION 1.** 66.948 of the statutes is created to read:

7 **66.948 Sound-producing devices; impoundment; seizure and**  
8 **forfeiture. (1)** In this section, "sound-producing device" does not include a piece  
9 of equipment or machinery that is designed for agricultural purposes and that is  
10 being used in the conduct of agricultural operations.

11 **(1m)** (a) Any city, village, town or county may, by ordinance, authorize a law  
12 enforcement officer, at the time of issuing a citation for a violation of s. 346.94 (16)  
13 or a local ordinance in strict conformity with s. 346.94 (16) or any other local  
14 ordinance prohibiting excessive noise, to impound any radio, electric sound

1 amplification device or other sound-producing device used in the commission of the  
2 violation if the person charged with such violation has 2 or more prior convictions  
3 within a 3-year period of s. 346.94 (16) or a local ordinance in strict conformity with  
4 s. 346.94 (16) or any other local ordinance prohibiting excessive noise. The ordinance  
5 may provide for impoundment of a vehicle for not more than 5 working days to permit  
6 the city, village, town or county or its authorized agent to remove the radio, electric  
7 sound amplification device or other sound-producing device if the vehicle is owned  
8 by the person charged with the violation and the sound-producing device may not  
9 be easily removed from the vehicle. Upon removal of the sound-producing device,  
10 an impounded vehicle shall be returned to its rightful owner.

11 (b) The ordinance under par. (a) may provide for recovery by the city, village,  
12 town or county of the cost of impounding the sound-producing device and, if a vehicle  
13 is impounded, the cost of impounding the vehicle and removing the sound-producing  
14 device. The ordinance under par. (a) shall provide that, upon disposition of the  
15 forfeiture action for the violation of s. 346.94 (16) or a local ordinance in strict  
16 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
17 noise and payment of any forfeiture imposed, the sound-producing device shall be  
18 returned to its rightful owner.

19 (c) The city, village, town or county may dispose of any impounded  
20 sound-producing device or, following the procedure for an abandoned vehicle under  
21 s. 342.40, any impounded vehicle which has remained unclaimed for a period of 90  
22 days after disposition of the forfeiture action.

23 **(2)** (a) Notwithstanding sub. (1m), any city, village, town or county may, by  
24 ordinance, authorize a law enforcement officer, at the time of issuing a citation for  
25 a violation of s. 346.94 (16) or a local ordinance in strict conformity with s. 346.94 (16)

1 or any other local ordinance prohibiting excessive noise, to seize any radio, electric  
2 sound amplification device or other sound-producing device used in the commission  
3 of the violation if the person charged with such violation has 3 or more prior  
4 convictions within a 3-year period of s. 346.94 (16) or a local ordinance in strict  
5 conformity with s. 346.94 (16) or any other local ordinance prohibiting excessive  
6 noise.

7 (b) The ordinance under par. (a) may provide for impoundment of a vehicle for  
8 not more than 5 working days to permit the city, village, town or county or its  
9 authorized agent to remove the radio, electric sound amplification device or other  
10 sound-producing device if the vehicle is owned by the person charged with the  
11 violation and the sound-producing device may not be easily removed from the  
12 vehicle. Upon removal of the sound-producing device, an impounded vehicle shall  
13 be returned to its rightful owner upon payment of the reasonable costs of impounding  
14 the vehicle and removing the sound-producing device.

15 (c) The ordinance under par. (a) shall include provisions that treat any seized  
16 sound-producing device in substantially the manner provided in ss. 973.075 (3),  
17 973.076 and 973.077 for property realized through the commission of any crime,  
18 except that the sound-producing device shall remain in the custody of the applicable  
19 law enforcement agency; a district attorney or city, village or town attorney,  
20 whichever is applicable, shall institute the forfeiture proceedings; and, if the  
21 sound-producing device is sold by the law enforcement agency, all proceeds of the  
22 sale shall be retained by the applicable city, village, town or county.

23 (d) The city, village, town or county may, following the procedure for an  
24 abandoned vehicle under s. 342.40, dispose of any impounded vehicle which has  
25 remained unclaimed for a period of 90 days after disposition of the forfeiture action.

1           **SECTION 2.** 346.94 (16) (a) of the statutes is amended to read:

2           346.94 **(16)** (a) Except as provided in s. 347.38 (1), no person may operate or  
3 park, stop or leave standing a motor vehicle while using a radio or other electric  
4 sound amplification device emitting sound from the vehicle that is clearly audible  
5 under normal conditions from a distance of ~~75~~ 50 or more feet, unless the electric  
6 sound amplification device is being used to request assistance or warn against an  
7 unsafe condition.

8           **SECTION 3.** 346.945 of the statutes is created to read:

9           **346.945 Vehicle owner's liability for radios or other electric sound**  
10 **amplification devices.** **(1)** (a) The owner of a vehicle involved in a violation of s.  
11 346.94 (16) shall be presumed liable for the violation as provided in this section.

12           (b) Notwithstanding par. (a), no owner of a vehicle involved in a violation of s.  
13 346.94 (16) may be convicted under this section if the person operating the vehicle  
14 or having the vehicle under his or her control at the time of the violation has been  
15 convicted for the violation under this section or under s. 346.94 (16).

16           **(2)** (a) A traffic officer who observes a violation of s. 346.94 (16) may proceed  
17 under sub. (3) (a) 1. instead of issuing a citation to the person operating the vehicle  
18 or having the vehicle under his or her control at the time of a violation of s. 346.94  
19 (16) if the traffic officer investigates the violation at the time of the violation.

20           (b) Any member of the public who observes a violation of s. 346.94 (16) may  
21 prepare a written report indicating that a violation has occurred. If possible, the  
22 report shall contain the following information:

- 23           1. The time and the approximate location at which the violation occurred.  
24           2. The license number and color of the motor vehicle involved in the violation.

1           3. Identification of the motor vehicle as an automobile, station wagon, motor  
2 truck, motor bus, motorcycle or other type of vehicle.

3           **(3)** (a) 1. Within 72 hours after observing the violation, the traffic officer may  
4 prepare a uniform traffic citation under s. 345.11 for the violation and, within 96  
5 hours after observing the violation, any traffic officer employed by the authority  
6 issuing the citation may personally serve it upon the owner of the vehicle.

7           2. a. Within 24 hours after observing the violation, a member of the public may  
8 deliver a report containing all of the information in sub. (2) (b) to a traffic officer of  
9 the county or municipality in which the violation occurred. A report which does not  
10 contain all of the information in sub. (2) (b) shall nevertheless be delivered and shall  
11 be maintained by the county or municipality for statistical purposes.

12           b. Within 48 hours after receiving a report containing all of the information in  
13 sub. (2) (b), the traffic officer shall investigate the violation and may prepare a  
14 uniform traffic citation under s. 345.11 and, within 72 hours after receiving such  
15 report, any traffic officer employed by the authority issuing the citation may  
16 personally serve it upon the owner of the vehicle.

17           (b) If with reasonable diligence the owner cannot be served under par. (a),  
18 service may be made by leaving a copy of the citation at the owner's usual place of  
19 abode within this state in the presence of a competent member of the family who is  
20 at least 14 years of age and who shall be informed of the contents thereof. Service  
21 under this paragraph may be made by any traffic officer employed by the authority  
22 issuing the citation and shall be performed within 96 hours after the violation was  
23 observed by the traffic officer or within 72 hours after a report containing all of the  
24 information in sub. (2) (b) was delivered to a traffic officer under par. (a) 2. a.

1 (c) If with reasonable diligence the owner cannot be served under par. (a) or (b)  
2 or if the owner lives outside of the jurisdiction of the issuing authority, service may  
3 be made by certified mail addressed to the owner's last-known address. Service  
4 under this paragraph shall be performed by posting the certified mail within 96  
5 hours after the violation was observed by the traffic officer or within 72 hours after  
6 a report containing all of the information in sub. (2) (b) was delivered to a traffic  
7 officer under par. (a) 2. a. Except for owners who live outside of the jurisdiction of  
8 the issuing authority, service under this paragraph may not be performed unless  
9 service under pars. (a) and (b) has been attempted.

10 (4) Defenses to the imposition of liability under this section include:

11 (a) That a report that the vehicle was stolen was given to a traffic officer before  
12 the violation occurred or within a reasonable time after the violation occurred.

13 (b) If the owner of the vehicle provides a traffic officer employed by the  
14 authority issuing the citation with the name and address of the person operating the  
15 vehicle or having the vehicle under his or her control at the time of the violation and  
16 sufficient information for the officer to determine that probable cause does not exist  
17 to believe that the owner of the vehicle was operating the vehicle or having the  
18 vehicle under his or her control at the time of the violation, then the owner of the  
19 vehicle shall not be liable under this section or under s. 346.94 (16).

20 (c) If the vehicle is owned by a lessor of vehicles and at the time of the violation  
21 the vehicle was in the possession of a lessee, and the lessor provides a traffic officer  
22 employed by the authority issuing the citation with the information required under  
23 s. 343.46 (3), then the lessee and not the lessor shall be liable under this section or  
24 under s. 346.94 (16).

1 (d) If the vehicle is owned by a dealer, as defined in s. 340.01 (11) (intro.) but  
2 including the persons specified in s. 340.01 (11) (a) to (d), and at the time of the  
3 violation the vehicle was being operated by or was under the control of any person  
4 on a trial run, and if the dealer provides a traffic officer employed by the authority  
5 issuing the citation with the name, address and operator's license number of the  
6 person operating the vehicle or having the vehicle under his or her control on a trial  
7 run, then that person, and not the dealer, shall be liable under this section or under  
8 the applicable provision of s. 346.94 (16).

9 **SECTION 4.** 346.95 (1) of the statutes is amended to read:

10 346.95 (1) Any person violating s. 346.87, 346.88, 346.89 (2), 346.90 to 346.92  
11 or 346.94 (1), (9), (10), (11), (12), or (15) ~~or~~ (16) may be required to forfeit not less than  
12 \$20 nor more than \$40 for the first offense and not less than \$50 nor more than \$100  
13 for the 2nd or subsequent conviction within a year.

14 **SECTION 5.** 346.95 (5e) of the statutes is created to read:

15 346.95 (5e) Any person violating s. 346.94 (16) may be required to forfeit not  
16 less than \$40 nor more than \$80 for the first offense and not less than \$100 nor more  
17 than \$200 for the 2nd or subsequent conviction within a year.

18 **SECTION 6.** 346.95 (5g) of the statutes is created to read:

19 346.95 (5g) A vehicle owner or other person found liable under s. 346.945 may  
20 be required to forfeit not less than \$40 nor more than \$80 for the first offense and not  
21 less than \$100 nor more than \$200 for the 2nd or subsequent conviction within a year.  
22 Imposition of liability under s. 346.945 shall not result in suspension or revocation  
23 of a person's operating license under s. 343.30, nor shall it result in demerit points  
24 being recorded on a person's driving record under s. 343.32 (2) (a).

25 **SECTION 7. Initial applicability.**

1           (1) This act first applies to violations committed on the effective date of this  
2 subsection, but does not preclude the counting of other violations as prior violations  
3 for sentencing a person, impounding a vehicle or impounding or seizing a  
4 sound-producing device or for suspending or revoking a person's operating privilege.

5

**(END)**